IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

Con.Case(C).No. 922 of 2005(S)

(NON COMPLIANCE OF THE ORDER IN WPC.39127/2003 Dated 13/07/2004)

PETITIONERS/PETITIONERS:
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1. JOSE. C.A., WORKING AS DRAFTSMAN
   GRADE II, PH SUB DIVISION, K.W.A.,
   GURUVAYOOR, THRISSUR DISTRICT,
   AGED 43 YEARS, CHERUVATHUR, ANJOOR P.O.,
   KUNNAMKULAM.

2. SALIH K.K., GENERAL SECRETARY,
   KERALA WATER AUTHORITY OVERSEERS
   ASSOCIATION, REG.NO.07-3/98,
   STATE COMMITTEE, ERNAKULAM,
   (WORKING AS DRAFTSMAN GRADE II, P.H. DIVISION,
   KERALA WATER AUTHORITY, KOCHI-16).

3. M.M. MATHEW, DRAFTSMAN GRADE II,
   WATER WORKS SUB DIVISION, KOCHI-16.

BY ADV. SRI.V.PHILIP MATHEW.

RESPONDENT/ FIRST RESPONDENT IN THE W.P.(C):

P.C. VIJAYAKUMAR, AGED 54 YEARS,
S/O. CHATHUNNI, MANAGING DIRECTOR,
KERALA WATER AUTHORITY, JALABHAVAN,
VELLAYAMBALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.BABU VARGHESE, SC, KWA
SRI.P.C.SASIDHARAN, SC, KPSC
SRI.M.R.GOPALAKRISHNAN NAIR
SRI.C.UNNIKRISHNAN, SC, KWA

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

CONT.CASE (C). NO. 922 OF 2005

Dated this the 17th July, 2007

JUDGMENT

H.L.DATTU, C.J.

Alleging that the first respondent in W.P.(C) No.39127 of 2003 has disobeyed, intentionally, voluntarily, purposefully and deliberately, the interim orders and directions issued by this Court in the Writ Petition on 13th July, 2004, the petitioners have filed this contempt petition with a request to initiate appropriate contempt proceedings against the respondent. After service of notice, the respondent has filed a detailed counter affidavit. At paragraph 7 of the counter affidavit, it is stated as under:

> "7. As regards the averments raised in paragraphs 10 and 11, the Kerala Water Authority is still following the ratio 3:7 in between direct recruitment and promotees in the cadre of D/Man Gr.I. The Honourable Division Bench in its common judgment in W.A.1906, 2051, 2178, 2306 and 2549 of 1998 and 369 and 1482 of 1999 dated 13.7.2000 have ordered to apply the ratio 3:7 with effect from 1.4.68. In obedience to the directions contained in the Judgment, 101 posts of D/Man Gr.II were temporarily upgraded to D/Man Gr.I implementing the ratio 5:2:3 with retrospective effect from 1.4.68 as per order No.13914/SCC/2000/JB/KWA dated 16.1.2001 and 9.2.2001. The above order was issued subject to satisfaction of the condition that the vacancies subsequently arising in the cadre of D/Man Gr.I shall be treated as vacancies of D/Man Gr.II till the 101 posts are restored in the cadre of D/Man Gr.II. Consequent on the promotion of D/Man Gr.I as AE and retirements of D/Man Gr.I, the 101 upgraded posts are restored and the 18 vacancies to the posts of D/Man Gr.I are filled up as per order No.23.1.2003. The

> upgradation of the 101 posts and the maintenance of 3:7 ratio are suppressed in the Contempt Petition. A true copy of the order dated 23.1.2003 is herewith marked and produced as Annexure R1(a). Since the Kerala Water Authority is maintaining the 3:7 ratio on the basis of cadre strength and therefore there is due compliance in the Annexure I order of this Honourable Court dated 13.7.2004. Hence there is no contempt."

2. The complainants have also filed a reply statement to the counter affidavit filed by the respondent. Except denying certain assertions made by the respondent, the complainants have not made any positive statements to demonstrate how the respondent has disobeyed the interim directions issued by this Court.

3. Section 2(b) of the Contempt of Courts Act defines the meaning of "civil contempt". To come under the aforesaid provision, there must be a deliberate, wilful and intentional disobedience of the orders and directions or judgment of a Court. No person to be punished for contempt of court for disobeying an order of court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same in a criminal proceeding.

4. As we have already noticed, except making bald assertions, the complainants have not stated how the respondent has disobeyed the orders and directions issued by this Court on 13th July, 2004. In view of the above, in our opinion, for the present, we need not have to take cognizance of this contempt proceedings. Accordingly, the

proceedings are dropped. However, liberty is reserved to the petitioners, if they so desire, to question any appointment that may be made by the respondent by filing appropriate petitions before the appropriate forum.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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